

**MINUTES
of the
JANUARY 2004 (UNOFFICIAL¹) MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**January 17, 2004
Room 307, State Capitol
Santa Fe**

Representative Rick Miera, co-chair, and Robert Desiderio, co-chair, called the meeting of the public school capital outlay task force to order at 9:40 a.m. on Saturday, January 17, 2004, in room 307 of the state capitol.

PRESENT

Robert Desiderio, co-chair
Rep. Rick Miera, co-chair
Sen. Ben D. Altamirano
Rep. Max Coll
Sen. Carroll H. Leavell
Sen. Cynthia Nava
Odis Echols
Veronica Garcia

Leonard Haskie
James Jimenez
Kilino Marquez
Rey Medina
Tony Monfiletto
Bud Mulcock
Neil Nuttall
Norman Suazo

Staff

David Abbey, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Education Study Committee (LESC)
Tim Berry, Public School Facilities Authority (PSFA)
Gary Carlson, Legislative Council Service (LCS)
Bob Gorrell, PSFA
Liz Holmes, LCS
Janet Peacock, LCS
Pauline Rindone, LESC
Bill Sprick, PSFA
Paula Tackett, LCS

ABSENT

Gary Bland
Pancho Guardiola
Rep. Larry A. Larranaga
William McCarthy
Alan Morgan

Advisory member

Rep. Ben Lujan

¹The statutory authority of the public school capital outlay task force was repealed effective January 1, 2004. Therefore, these minutes are not official, but represent a report of the actions and discussion during the meeting.

Representative Miera and Mr. Desiderio, co-chairs, welcomed members and guests. The minutes of the November 24-25, 2003 meeting of the task force were approved. Paula Tackett reviewed the logistics of the meeting, including the need for a working lunch.

Senator Altamirano asked the task force to consider a motion to recommend funding of \$20 million for building Chapparal high school in the Gadsden school district. The motion was seconded by Senator Nava. Senator Altamirano noted the extreme need for this school based on his personal knowledge of it. Secretary Jimenez agreed that there is a significant need for this school. Ms. Tackett noted that initial funding for Chapparal high was approved by the public school capital outlay council (PSCOC) during the last grant award cycle and that the proposed legislation that the task force would be considering later has some provisions to address continuation funding for this school and for other projects that the PSCOC has partially funded. The task force indicated it would hold taking action on the motion until after consideration of the proposed legislation.

Review of the PSCOC Awards Process

Ms. Tackett, chair of the PSFA subcommittee of the PSCOC, and Tim Berry, deputy director of the PSFA, reviewed the proposed process that the PSCOC is considering to implement the standards-based process and several issues that are still to be resolved. Ms. Tackett noted that this is a preliminary proposal, as the PSCOC has not yet formally adopted a process. She stated that, for discussion purposes, the process has been broken down into four phases: pre-application, application, post-application review and analysis and grant awards. She noted that the goal of the PSCOC and staff is to strike the appropriate balance between PSFA statutory duties and local districts' autonomy.

Mr. Berry explained the proposed process in more detail. He noted that the project ranking system would be built around what he called the New Mexico condition index (NMCI) of the school, which is the new index calculated by 3D international (3DI) that measures the needs under the adequacy standards, including a factor for growth, and the traditional building renewal and replacement needs using the national building owners and managers association (BOMA) standards. The process would require PSFA staff to work with the districts to review and update the index for their individual schools and to try and ensure consistency between the information in the five-year plans and in the facilities database. Mr. Berry explained that it has been proposed that the NMCI would also be used to screen the potential pool of applications by informing districts of the highest ranked projects on the ranking list that could tentatively be funded within 150 percent of the projected available state funds. He also discussed the proposed appeals process that would give districts the opportunity to challenge PSFA initial rankings, the intent of the PSFA field review efforts and various issues related to the final grant award decision.

During the discussion period, Mr. Abbey, also a member of the PSCOC, expressed his opinion that the ranking process should continue to have some flexibility built into it. He noted that the PSCOC could not expect to "push a button" and get the right answer. The task force was reminded, however, that the court and the law requires funding based on deviation from the adequacy standards.

Review of Statewide Assessment Data

Bob Gorrell and Bill Sprick of the PSFA and John Oualline of 3DI provided a number of reports on the statewide assessment data. Copies of all handouts are in the meeting file.

Mr. Sprick began by reviewing the charter school analysis that shows the proposed variances from the adequacy standards that staff presented to the PSCOC and the actual variances granted by the PSCOC. He explained the rationale behind granting variances to charter schools and the factors that staff used in making their recommendations. During the discussion, staff was asked whether the 3DI report includes specific information on the needs of charter schools. Mr. Sprick said that this information is included in the database, but that there is not a separate run for charters.

Mr. Sprick also provided information on the funding needs for full-day kindergarten. He noted that a recent survey by the public education department shows that 117 classrooms are needed for full-day kindergarten. The estimated cost of providing these classrooms ranges from \$6.7 million using portables to \$21 million for permanent structures. In response to a question, Ms. Tackett noted that the adequacy standards include classroom space for kindergarten, as well as auxiliary needs such as playground equipment and fencing. In response to a question regarding funding for kindergarten, she also said that schools with insufficient space for kindergarten will not automatically rise to the top of the 3DI rankings, as this is only one factor included in the ranking. Mr. Gorrell added that insufficient kindergarten space, for example, will not be treated differently than insufficient space for a science classroom for the new science requirement.

Mr. Oualline reviewed the special report on the use of portables. He noted that the report shows a total of 666 portables at schools throughout New Mexico, comprising 3.3 million square feet of space. The 3DI lifecycle analyses use a useful life of 15 years as the baseline for portables. Individual portables are then evaluated against this baseline and for other specific repair costs. According to the 3DI report, the replacement cost for expired portables is \$230 million for replacement with new portables or \$296 million for replacement with permanent construction. If all current portables, regardless of age, are replaced with permanent construction space, the cost would be \$457 million.

Mr. Gorrell reminded members that the updated statewide assessment includes the cost for additional space due to projected enrollment growth and provided a table showing the growth factors used in the analysis. He explained that the growth factor is calculated on a school-by-school basis, using the average growth in the 40-day membership over the 1998-2002 school years. It assumes 100 percent capacity. In response to questions, he noted that the table will not include new schools started after 2002 and that the growth factors will be a starting point for the PSFA and districts to use in the planning process. The purpose is to ensure that the relative rankings recognize the space needs in growing areas.

Mr. Gorrell then asked the members to turn their attention to the charts showing the statewide comparative rankings by district and by school. He explained that these are the preliminary rankings by 3DI and that the PSFA feels comfortable that the ranking using the

"weighted + growth" index reflects the reality of the condition of the schools around the state. He noted that the "FCI" in the chart is no longer based on BOMA standards, but has been revised to include the costs of meeting the adequacy standards as well as projected enrollment growth. This new index should be renamed the NMCI. He also provided a chart showing the proposed weighting system.

Ms. Tackett briefly explained the rationale for the various columns on the charts, noting that at the last meeting, the task force asked staff to separate out the costs of meeting the adequacy standards from the costs of building renewal and replacement. This information is provided in the right-hand columns of the chart, both on a weighted and unweighted basis. She pointed out that when the task force discusses its recommendations on funding later in the meeting, this information will be addressed again.

Members looked at the rankings for a number of specific schools and discussed the relevant methodology and data. In response to a question about combined schools, Mr. Oualline noted that 3DI will be breaking out the data separately for combined schools that share a campus but have separate facilities. Mr. Abbey noted that the replacement cost numbers need "to be taken with a grain of salt" and Mr. Gorrell agreed that they are not the project cost that the PSCOC will fund. They merely give an indication of need using a consistent methodology for all schools. Mr. Gorrell reiterated that the numbers are preliminary and that PSFA will be working with all the districts to refine them. Representative Miera commented that once the districts understand that the numbers will be used in making grant awards, he felt that they will be motivated to correct any errors and make sure the data reflects reality.

In closing, Mr. Oualline noted that the total need reflected on the charts amounts to \$2.3 billion. He said that this reflects a snapshot in time and represents the cost today of addressing the needs. If the state adopts a goal of addressing the needs over a 10-year period, the amounts will need to be increased by three percent per year for inflation and 2.75 percent per year for additional renewal and replacement costs. Mr. Gorrell added that it will cost \$140 million a year just to maintain schools in their current condition.

Critical Capital Outlay Continuation Projects

Mr. Sprick presented a table of continuation projects from the 2003-2004 PSCOC awards. A copy is in the meeting file. The task force had previously directed staff to review these projects and Mr. Sprick indicated that based on staff analysis and refinement of the projects, it will cost approximately \$65 million to fund these projects. Mr. Nuttall noted the importance of these projects for many schools, including two in his district that were not included to be funded. Ms. Tackett said that the proposed legislation authorizes the PSCOC to provide funding for continuation projects during a transition period.

Review of Proposed Legislation — The General Capital Outlay Bill

Ms. Tackett, Ms. Peacock and Mr. Carlson reviewed draft legislation. A copy of the legislation is in the meeting file. The following changes to the draft bill were discussed:

- With regard to the language in the legislative offset provisions (page 16), there was a discussion about the time period for school districts to accept or reject their direct

legislative appropriations. It was noted that there is no definite time period. The acceptance occurs when the certification is made to the state board of finance that the district is ready to begin the project and is thus requesting that the bonds be sold or general fund appropriations be allocated. It was agreed that the bill should provide a specific time limit for a school district to "reject" its direct legislative appropriations.

- On page 21, Subsection G, Representative Coll noted that there should not be an automatic appropriation to the PSFA for its operating budget, but that it should go through the regular appropriation process like all other agencies. Secretary Jimenez agreed that this is a preferable approach. It was agreed that the bill should say "may be appropriated" instead of "is appropriated".
- It was agreed that the language relating to continuation projects beginning on page 27 should be clarified to specify that it applies to projects partially funded by the PSCOC in the September 2003 allocation cycle. In addition, there was concern about an unlimited time period for funding the continuation projects, so it was agreed that it will be limited to three years. Finally, there was concern about limiting the funding for continuation projects to the "minimum amount necessary to meet the statewide adequacy standards". Senator Nava noted that this could conflict with the planning process upon which the project is initially funded. It was agreed to delete the word "minimum" and see if further clarification is needed.
- It was recommended that the language allowing the use of funds in the event of an emergency be tightened by requiring that the safety risk be an immediate risk.
- With respect to the language in Section 11, beginning on page 36, relating to the certification of need, Co-chair Desiderio explained that the 3DI data had been given to staff on Friday, January 16, and at about 9:00 p.m. Friday evening, this section had been drafted to address the new total costs reflected in the data, with a new proposal to have the goal of the state be to reduce the average NMCI from 36.87 to 25. The goal of a statewide average of 25 was selected as representing a meaningful reduction taking into account the ability of the state to effectively manage the funds.

Mr. Desiderio said that upon reflection, he is now recommending that the task force not adopt this approach until further analysis could be done on the data. He said that he is not certain whether the proposal will enable the state to convince the court that all schools will be brought up to adequacy within a reasonable time period. He also said that the task force had initially been working on a conceptual framework that looked at bringing all schools up to adequacy within 10 years and reducing the statewide average facility condition index for building renewal and replacement to 20 percent. However, the new data shows greater-than-expected costs for meeting the adequacy standards and a facility condition index for building renewal and replacement well below the 20 percent target. In addition, staff learned that the base numbers do not include the appropriate escalation factors to evaluate need over a multi-year time frame. Given all these issues, Mr. Desiderio recommended that the task force continue to work on this issue over the next

year. He said the PSCOC will continue moving forward with implementing the standards-based process on a pilot basis to see how the new process will work. In addition, it will address the continuation projects previously discussed. Since the legislation already includes provisions to keep the task force in operation for another year, this is consistent with that proposal.

The task force agreed with the recommendation of Mr. Desiderio and directed staff to rewrite this section appropriately.

- On page 42, it was noted that Section 14, the duties of the public school capital outlay task force, duplicates Section 22 and should be stricken.
- On page 47, Section 16 of the bill allows for a mediation process for resolving disputes over the five-year facilities plan. A number of task force members expressed concern about the potential proliferation of requests for mediation using this provision and about requiring the secretary of public education to make final decisions in these disputes. After considerable discussion, it was agreed to remove this section, but to insert language supporting the establishment and use of a dispute resolution process within each district to address concerns about the facilities master plan.
- On pages 53 through 55, the indexation of the SB 9 amounts should be changed to increase the guarantee amount to \$60.00 per unit per mill for fiscal year 2005 and then index both this amount and the \$5.00 minimum amount to the CPI beginning in fiscal year 2006.
- On page 57, it was explained that the proposed membership of task force has been reduced by eliminating members who had not participated in the past year. This includes the state investment officer and the dean of the college of engineering at New Mexico state university. Ms. Ball noted that it is her impression that Ms. Deborah Gallegos, the deputy state investment officer who attended the task force meeting on November 24, expressed a desire to continue to participate. Staff was requested to contact the state investment officer and determine if he or his designee wishes to serve on the task force. If so, he will be retained.

The task force voted to recommend this bill with these changes.

Review of Proposed Legislation — The Charter School Bills

Ms. Tackett explained that there are three bills relating to charter schools — the bill discussed at the previous meeting that encompasses the recommendations of the charter school subcommittee, a bill drafted at the request of Secretary Jimenez that addresses the issue of lease payments for charter schools and a bill drafted at the request of the public education department that provides funds to charter schools on a per-member basis to match federal funds available for facilities of charter schools.

Ms. Tackett explained the three bills. Task force members discussed the similarities and

differences between the bill earmarking \$3 million for lease payments and the bill earmarking \$5 million to match federal funds to be distributed on a per-pupil basis. In response to questions, Dr. Michael Kaplan from the public education department provided additional information about the federal funds appropriated by congress under the No Child Left Behind Act of 2001 that will be awarded through a competitive application process to states that provide assistance to charter schools for their capital outlay needs. After considerable discussion, it was agreed to endorse the idea of allowing up to \$3 million per year to be appropriated from the public school capital outlay fund for lease payments for charter schools and to specify that these funds could be used to match federal funds under the No Child Left Behind Act of 2001. The lease payment assistance would be a transitional program that would expire in 2009 when all charter schools are intended to be in public buildings. Ms. Tackett noted that from a drafting perspective, these provisions should be included in the general capital outlay bill rather than the charter school bill. The task force accepted this recommendation.

In terms of the charter school bill, the following changes were discussed:

- There was considerable discussion about the requirement on page 3, lines 23 through 25, for the accounting services for a charter school to be performed by the school district. Members expressed concern that this requirement is too broad and should be targeted to those schools that have repeated financial problems and audit exceptions. It was also noted that school districts may oppose this requirement if they feel that they are being forced to provide these services without compensation. In the end, a motion was passed to delete the provision entirely. Some members felt that this is a serious problem that needs to be addressed and Ms. Tackett said that staff will draft an amendment that could be proposed that would require the district to provide accounting services when certain events trigger the need.
- On page 6, line 7, language should be added to clarify that a charter school that maintains separate facilities at two or more locations within the same school district is considered a single school for purposes of the factors in the funding formula.
- On page 7, line 10, it was agreed to change March 2004 to July 2004, since the March date would require the bill to pass with an emergency clause.

The task force voted to recommend the charter school bill with these changes. It also accepted a motion to allow staff to make other necessary changes to both the general capital outlay bill and the charter school bill to carry out the intent of the task force.

Senator Nava reminded members that Senator Altamirano had asked the task force to consider a motion to recommend a \$20 million appropriation for construction of the Chapparral high school in the Gadsden school district. There was discussion about the need for this motion given the provisions in the proposed legislation that give priority to funding for continuation projects over the next three years. Senator Nava expressed her concern that the PSCOC still has considerable discretion to determine what is a continuation project and at what level it should be funded. The task force adopted a substitute motion to request the PSCOC to carefully review all

of the projects that qualify as continuation projects to ensure that the rationale for the initial funding decision is going to be upheld.

The meeting was adjourned at 4:45 p.m.